

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH Case No. 2015080656

DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on October 19, 2015, in Sacramento, California.

Claimant's mother¹ represented claimant.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Testimony and documentary evidence was received, oral arguments were presented, and the matter was submitted for decision on October 19, 2015.

ISSUE

Must ACRC provide reimbursement for dental services provided to claimant?

FACTUAL FINDINGS

1. Claimant is a 14-year-old female ACRC client who has been diagnosed with autism. She currently resides with her parents and two younger siblings. According to her Individual Program Plan (IPP), claimant requires constant supervision due to her

¹ Names are not being used for claimant or her parents to protect claimant's privacy.

level of care, and cannot safely be left home alone. She has deficits in areas of communication (not easily understood by others), safety (cannot identify strangers, wanders, etc.), behaviors (will tantrum when upset or demands are placed) and self-help (needs constant prompting and supervision). The family receives 243 hours of in home supportive services (IHSS) per month. Her father is her IHSS provider.

2. Claimant's May 20, 2015 IPP provides with regard to her dental care:

[Claimant] has seen a dentist through American River Dental. She had extensive work done on April 9th, which included filling 14 cavities & 2 root canals. [Claimant] has to be sedated to have any dental work completed.

3. Claimant incurred \$6,408 in dental costs over the period January 6, 2015, through April 9, 2015. She received all dental services through American River Dental Group. Claimant is insured for dental services through Aetna insurance. Aetna paid \$1,883 towards the total amount, and claimant's parents paid an additional \$1,492. As of October 13, 2015, claimant's outstanding balance for dental services was \$3,033. She is seeking reimbursement for amounts paid, as well as the outstanding balance from ACRC.

4. Claimant's mother testified at hearing. In January 2015, claimant experienced pain in her two bottom front teeth. She could not sit through class without crying, and would identify these two teeth and say "ouch." Claimant's mother brought her in to be seen by her general dentist, Erin Carson, DDS, at Kids Care Dental. Dr. Carson observed a lesion between the two teeth on claimant's lower jaw, and referred her to Dr. Liberty, an oral surgeon at Kids Care for a second opinion. Dr. Liberty was unable to perform necessary clinical tests and recommended that she be seen by an endodontist, Guy E. Acheson, DDS, for full mouth oral rehabilitation. Dr. Acheson performed the dental work on April 9, 2015.

Dr. Carson prepared a letter detailing claimant's dental history and the reasons for her referral to Dr. Liberty, and ultimately Dr. Acheson. She noted:

I have been seeing her since 2013 during which time I have had limited success fulfilling her dental needs in office. During this time I have counseled the family on causes of [claimant's] oral health. This includes not just brushing, flossing, but trying to address dietary factors as well. The family reports struggling with limiting her constant snacking at home due to her need for sensory stimulation. This constant supply of carbohydrates is creating an acidic oral environment that is increasing her rate of dental decay.

Dr. Carson further explained that, due to claimant's limited ability to communicate, "it was impossible to do the necessary clinical tests to ascertain if the lesion was dental abscess or other dental pathology." She referred claimant out for second opinion by an oral surgeon, and eventually for full mouth oral rehabilitation by Dr. Acheson.

5. Dr. Acheson specializes in complex restorative dentistry. He works with developmentally delayed patients, and performs pediatric hospital dentistry under general anesthesia. He does not participate in the Denti-Cal program.

Dr. Acheson first saw claimant on or about January 6, 2015. He developed a treatment plan that included root canal work on claimant's two lower front teeth (Teeth 24 and 25) which he identified as the source of the lesion. Dr. Acheson estimated the total treatment plan at that time would cost \$2,936, of which the patient's portion was \$1,436, and the amount paid by insurance to be \$1,500. Claimant's mother emailed this dental service cost information to claimant's ACRC service provider, Lorrie Bennett, on or about April 8, 2015.

6. Lorrie Bennett testified at hearing. Ms. Bennett spoke with claimant's mother on April 8, 2015. Claimant's mother indicated that the family's medical and dental insurance had agreed to pay for a portion of claimant's dental needs, but there "is a big chunk of it that will be the parents' responsibility" and she was asking if ACRC would be able to help fund any or all of the remaining costs. Ms. Bennett indicated that dental services were not typically covered by ACRC, but that she would run it by her

supervisor and get back to her.

On April 9, 2015, Ms. Bennett emailed claimant's mother and inquired whether Medi-Cal/Denti-Cal would cover any part of the procedures, and if not whether she could provide Ms. Bennett with documentation of the denials by Medi-Cal/Denti-Cal. On April 13, 2015, claimant's mother responded by indicating that American River Dental was not a Medi-Cal/Denti-Cal provider and that Dr. Acheson was the only specialist who would work with claimant's general dentist, Dr. Carson.

7. Ms. Bennett referred the matter for internal ACRC review. Different options were considered, including switching claimant's entire dental care to a Medi-Cal dentist, and having an apportionment of expenses between claimant's private insurance and Medi-Cal, leaving only the hospital fee (\$676) uncovered. ACRC did not know that claimant's dental services had already been provided by that time. They presumed that dental services had not yet been provided.

8. An IPP planning meeting was held on May 20, 2015. Ms. Bennett was present. Claimant's mother disclosed at that time that the dental work had been completed through Dr. Acheson, and that the family was requesting that ACRC pay the outstanding balance. Claimant's mother was advised that, since the family went outside of the Planning Team Meeting and had the work completed, ACRC would not reimburse the family for the outstanding bill. (See Finding 3.)

9. On July 9, 2015, ACRC issued a Notice of Proposed Action advising claimant's parents that it was denying their request for reimbursement for dental services. The reason given for this action was: "This decision to access dental services was a unilateral decision made by [claimant's mother] outside the Planning Team process and generic resources were not accessed to the full extent."

Claimant filed a Fair Hearing Request on August 5, 2015, and these proceedings followed.

DISCUSSION

10. ACRC has an approved² Service Policy Manual which contains General Standards for the Purchase of Services and Supports. It authorizes ACRC to pay for services and supports in certain instances when no public or private resources are available to meet the identified need. Where requests are made for dental services, such decisions are made by ACRC's Dental Services Review Committee (DSRC). ACRC's policy regarding dental services for clients under 21 years old is that payment will be considered:

Only after exhaustion of all private and public funding sources and after determination that natural supports are unavailable. Denials should also be appealed prior to ACRC's consideration for funding. When the preceding process has been completed, any unfunded amounts can be submitted to DSRC for review.

11. ACRC does not provide services and supports that are normally the parents' responsibility to provide regardless of whether a child is disabled. Jennifer Bloom is ACRC's Client Services Manager, and Ms. Bennett's supervisor. She testified at hearing. Ms. Bloom explained that ACRC does not typically fund dental services. ACRC, however, will ask parents to attempt to access private dentists or Medi-Cal/Denti-Cal providers and, where they are unsuccessful, obtain denial letters from the dentist or Denti-Cal confirming the unavailability of dental services. The request will then be presented to ACRC's Best Practices Committee or DSRC for consideration of ACRC funding. Factors considered in funding such requests include whether: 1) the service conforms to the Lanterman Act; 2) the service meets a need related to the developmental disability of the consumer; 3) the service or support achieves goals or objectives that are clearly stated and defined by measurable outcomes; 4) the service is

² The Services Policy Manual was approved by the Department of Developmental Services on June 19, 2008.

supported by research as effective and not harmful; 5) the service or support is not duplicative of one already being provided through natural supports, generic services or purchases by the regional center; and 6) the service is cost effective.

12. In this case, Ms. Bloom noted that ACRC was not provided with an opportunity to go through the above process. ACRC requested, but never received documentation of any denials by service providers or Medi-Cal/Denti-Cal. Absent documentation, ACRC could not determine whether generic resources were exhausted. Claimant's parents were aware in January 2015 that she would be undergoing comprehensive dental work in April 2015. Although they had several months to do so, they did not present ACRC with dental cost information until April 2015, and then only after the oral surgery had been performed. ACRC's process for consideration of funding of dental services presumes that requests are made prior to the expenditure of funds. ACRC considers the consumer's ability to pay in making funding decisions. It has yet to receive adequate financial information from claimant's family to make a decision.

13. Importantly, the ACRC decision regarding funding of dental services is to be made by a planning team with the consumer's or her family's input. It was never contemplated that the decision be made solely by the consumer's family, as was done here. Essentially, ACRC viewed claimant's request as one for reimbursement, and not for ACRC planning services. ACRC noted that it has on staff those who specialize in accessing dental services and that it was prepared to offer that service to claimant then, and also looking ahead. Here, claimant's parents came to ACRC only after they had agreed to have Dr. Acheson provide dental services for their daughter, and did not avail themselves of ACRC assistance in securing perhaps more cost-effective dental services.

14. Claimant's mother acknowledges making the decision to use Dr. Acheson's very capable dental services. She understood he was not a Denti-Cal provider and that he would accept their private dental insurance. She provided no notice to ACRC until April 2015, and then only after the dental services had been provided. She did not avail herself of ACRC dental planning services, suggesting instead that it was incumbent upon ACRC to recognize the need for such services and offer them to claimant. Claimant's mother further explained that she was not happy with the level of services provided by ACRC and so it was pointless to work with ACRC in this way. She also indicated that she

was so preoccupied with caring for claimant that she was unable to provide ACRC with the information requested.

15. Claimant's mother had three months from the time that a dental plan had been developed by Dr. Acheson to work with ACRC on a dental services plan. The ACRC process for funding dental services as described in Findings 10 and 11, is a proven and meaningful process by which ACRC makes informed and consistent funding decisions. Claimant's parents' failure to engage in this process over the three-month period prior to April 9, 2015, now precludes after-the-fact reimbursement of dental services through a dental provider of the parents' own choosing. For these reasons, claimant's appeal of ACRC's denial of reimbursement of claimant's April 9, 2015 dental services through Dr. Acheson will be denied.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. The Lanterman Act gives regional centers, such as ACRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because claimant is requesting reimbursement for dental services not authorized under her IPP or by ACRC, she bears the burden of proof.

4. Regional Centers are required to “identify and pursue all possible sources of funding for consumers receiving regional center services.” (Welf. & Inst. Code, § 4659, subd. (a).) Section 4659, subdivision (d) provides in pertinent part:

(d)(1) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit. ...

Regional centers may pay for medical or dental services during the following periods:

(A) While coverage is being pursued, but before a denial is made.

(B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued.

(C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan.

5. Welfare and Institutions Code section 4647, subdivision (a), provides: Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual

program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

6. The matters set forth in Findings 10 through 15 have been considered. ACRC is authorized to pay for services and supports in certain instances when no public or private resources are available to meet the identified need. Consumers may make request of ACRC for services and supports, including dental services, in accordance with a process that reasonably contemplates that an informed decision will be made by ACRC's Dental Services Review Committee. ACRC's policy regarding dental services for clients under 21 years old is that such will be considered only after exhaustion of all private and public funding sources and after determination that natural supports are unavailable. When the preceding process has been completed, any unfunded amounts can be submitted to ACRC for review.

7. Here, claimant's family made a unilateral decision to have dental services provided by Dr. Acheson. They did not involve ACRC in the planning process for claimant's dental services, seeking only after-the-fact reimbursement. They failed to provide ACRC the requested information regarding denial of dental services by private and public funding sources, or the family's financial situation. Claimant's parents' failure to engage in a dental planning process with ACRC over the three-month period prior to April 9, 2015, now precludes any reimbursement of dental services by Dr. Acheson. Dr. Acheson's skill and competence as a dental provider are certainly not at issue. However, he remains a dental provider of claimant's parents' own choosing and ACRC cannot fairly be required to reimburse outstanding balances due him.

For all the above reasons, claimant's appeal of ACRC's denial of reimbursement of claimant's dental services through Dr. Acheson will be denied.

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ORDER

The appeal of claimant and her request for reimbursement of dental services are DENIED.

DATED: October 21, 2015

JONATHAN LEW

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days. (Welf. & Inst. Code, § 4712.5, subd. (a).)